
February 23, 2018

The Free Speech Essay Contest

Topic 2: General Condition of Freedom of Speech
We limit our self-expression the moment we decide to become cooperative members of society. Under the shroud of maturity, we agree to the terms of a social contract sacrificing our individual fulfillment for the security of a collective. Society is an ever-evolving organism with emotion and bias and culture, and it demands compromise for cooperation to exist. This compromise, coined “Social Contract Theory” by Enlightenment-era philosophers such as Jean-Jacques Rousseau and Thomas Hobbes, is key to understanding the complexity of the modern debate over freedom of speech. While the claims in this essay could be analyzed from a purely legal and constitutional perspective, I argue that the philosophical argument, which ultimately guided the writings of the constitution and the creation of the United States legal system, is the purest argument there is for analyzing freedom of speech and its largest threats.

At its core, the social contract theory seeks to explain an important aspect of the human experience: willful subordination. Its thesis states that humans participate in a mutual agreement with one another, called “signing the social contract”, which sacrifices certain aspects of individual freedom in order to establish authority. The legitimacy of this authority is maintained as long as fair law is in place and protection of fundamental rights is ensured; if these services cannot be provided, then the social contract is broken and the authority can be dismantled and revised. It is through this lens that freedoms are interpreted not as privileges granted by a ruler, but as inalienable aspects of the human experience selectively limited by authority to create order. A proper authority recognizes that the ideal social contract minimizes the limitation of freedom in order to maximize the free pursuit of life, liberty, and happiness.
1. Where do threats to freedom of speech originate?

Before specific threats can be analyzed and solutions can be proposed, we must determine where the threats originate. Another way to word this question is “which human authorities practice the social contract theory by limiting freedom of speech”? The two broadest organizations that will be addressed within the context of the United States are the U.S. government and American society.

The United States government is the most obvious example of the social contract theory in practice. The influence of philosophers on the founding fathers is evident in the wording of the U.S. Constitution, “We the people...””, which expresses the concept that the government exists through the will of its citizens to protect their fundamental rights. The juxtaposition of intent in written law displays the uniqueness of the American political system: the Constitution limits the government as much as the government limits its citizens, and both have a purpose under the social contract theory to selectively limit the freedoms of the other to create order and balance.

The distinction that needs to be emphasized is the use of written law to accomplish these goals. This is called an explicit social contract, as the rules which govern the interaction between the citizens and the government are codified on a document. Through legislation, new rules are arranged on a paper and approved, and the overt nature of these regulations ensures that the citizens have the means to physically read and comprehend these laws rather than living in highly-regulated ignorance. There are instances where rules do not share as much of the public eye, such as the law against murder (well known) versus the law against distributing unpasteurized milk (less well known), yet both are codified and available for viewing. Conformity to explicit laws are ensured by a policing force, whether that is the actual police or an administrative body such as the Center for Disease Control and Prevention (CDC). The
existence of police forces and the acceptance of their roles in society, even if that involves violence, reveals the nature of compromise in our social contract with the government. Thus the U.S. government has both the legislative and physical means to limit freedom of speech, making it an originator to its threat.

American society is often overlooked as participating in a social contract with its citizens, yet this contract is perhaps the most influential. Just like a government, society can exist only by the will of participants. The social norms and taboos woven into the society’s fabric hold weight as long and individuals agree on their importance. The moment a group of people choose to collectively disobey a set of social norms, such as members of the Amish community disavowing modern technology and secular society, they form their own society governed by separate sets of clauses in their social contract. Every society is governed by different sets of rules, whether by custom, culture, religion, or a combination, and these rules, separate from a governing body, are part of an implicit social contract.

How is this social contract implicit? Rather than having laws codified in an official Constitution, society has uninscribed laws learned through cultural participation and consequences of negligence. In American society, there is not a codified rule in the Constitution stating that “students must raise their hand in the classroom before speaking to the instructor”, yet most students give this rule as much attention as the speed limit. Deciding not to participate in this social norm bares consequences, whether that is an aura of disrespect in the classroom or a visit to the school principal. Failing to address superiors in a respectful, professional manner can cost hopeful employees a much-needed job. Subscribing to an ideology that does not compute with the reigning narrative of society can cost friendships and future employment. This aspect of society reveals one of the key differences between implicit and explicit rules: implicit rules are
enforced by other members of society, not an official police force with the task of ensuring total coercion to explicit law.

This can create the misconception that freedoms are not restricted under an implicit social contract, but the type of restriction only varies in comparison to an explicit contract. In terms of the freedom of speech in the United States, the implicit consequences are arguably worse. An individual stating “I choose not to associate with black people” breaks no explicit law warranting arrest, but the numerous implicit laws broken by this statement, namely those of anti-racism and decency, warrant social consequences that can be as harsh as a physical policing force. We have witnessed the fall of numerous celebrities over their choice of words, but much fewer have fallen over disobeying written law. There is no physical force preventing self-expression, yet choosing to cooperate with social norms and taboos limits our freedom of speech much more than any explicit law. As long as humans remain social creatures, limitations such as this are inevitable.

2. What is the largest threat to freedom of speech?

Implicit and explicit social contracts can be viewed separately as threats to free speech, but the largest threat occurs when entities attempt to make implicit laws explicit. Jumping the barrier between these two categories, or giving the rules of custom, religion, and decency the consequences of an official police force and legal system, is undoubtedly the greatest threat to free speech in the 21st century.

Examples where this “jump” has occurred is readily apparent in the modern world. Anti-blasphemy laws are numerous in Islamic countries that have completely bridged the gap between religion (implicit) and government (explicit). Iran’s “Ministry of Culture and Islamic Guidance” (MOCAIG) has the full force of autocratic power to ensure that individuals and media follow the
strict edicts of Shia Islam\(^9\). Insulting government officials, Islamic law, or the prophet results in punishments ranging lashings to death. In African countries such as Zambia, speech that undermines the sexual customs of society can result in immediate prosecution and imprisonment\(^9\). Even in prominent liberal democracies, there have been efforts to merge implicit laws of decency with the explicit laws of the state. In thirteen European Union countries, Holocaust denial is a criminal offense warranted with jail time. EU commissioner Vera Jourova even expressed that “I find it disgraceful that Holocaust denial is a criminal offense in only thirteen member states”\(^7\), reflecting a larger stance within the European Union to investigate and prosecute xenophobia in response to the ideological battles frothed to the surface of European society by the refugee crisis. In Canada, the use of human rights tribunals to enforce the decisions of the Canadian Human Rights Commission (HRC) is a trend that many worry is stifling the debate of controversial topics in the name of state-mandated inclusion. These tribunals are directly funded by Parliament and carry the power to impose fines on entities if they happen to do something as vague as “treating someone unfavorably”. Ian Fine, a past director of the HRD, even stated, “We believe that in our society there should be limits on freedom of expression and freedom of speech, that there is a line, not one that we draw, but one that must be drawn nevertheless”\(^1\). This quote is a perfect representation of liberal democratic sentiment in the modern world: freedom of speech has its dangers and should be limited where it poses a threat to inclusion and decency.

In the United States, the first amendment guarantees extensive rights to its citizens not offered in many other nations. Yet if the U.S. government practices a social contract with its citizens, where is the freedom of speech limited? The Supreme Court case *Chaplinsky v. New Hampshire* expressed the concept that “fighting words”, or instances where words were directly
tied to physical violence, are not protected under the first amendment\(^3\), and neither is speech inciting “imminent lawless action” (Brandenburg v. Ohio) or child pornography (New York v. Ferber). Unlike most democracies, this is where the limitations to free speech end. However, there is a trend in the United States today to impose conditioned limitation of speech for the sake of tolerance and decency (“jumping” the barrier between implicit and explicit law) to mirror the attitudes of other democratic nations. This is not only a threat to the uniquely American concept of free speech, but it is based on the flawed paradox that state-mandated positivity will breed genuine positive attitudes.

3. How can we combat this trend?

The first step is to recognize the political situation. The debate over free speech in academic arenas like college campuses is becoming increasingly difficult as long as it is deemed a “right-wing” cause. This is an issue independent of political ideology, as it will affect how we can express our views in the public arena.

The second step is to understand the separate roles of society and government. Movements calling for respect and decency such as the #metoo movement show that government intervention is not needed to ensure effective social change. Society has both the manpower and the means to create a more tolerant society on its own. Mandating respect with the threat of jail time is a paradox that does nothing to foster genuine respect, only fear and distaste.

The final step is to recognize that wherever diversity of thought is present, there will be bad ideas. Bad ideas can be wrong, stupid, and offensive, yet trying to filter these ideas through a government suppression program will do nothing but force them into a different societal arena. When “bad ideas” are identified by a political authority and targeted, it is only a matter of time
before the definition of a "bad idea" is expanded to other realms of speech where it was not originally intended.

4. Conclusion

Dean Steacy, a lead investigator of the HRC, stated, "Freedom of speech is an American concept, so I don't give it any value." Indeed, this value holds unique weight in American culture, yet its existence is not guaranteed. If we wish to preserve this fundamental right, there must be recognition and discourse. If rational, liberty-loving citizens decide to be silent about the issues that impact them, something else more sinister may make the important decisions for them.
Bibliography


